TAN SRI RAHIM TAMBY CHIK v. HOWARD LEE CHUAN HOW & ORS

HIGH COURT MALAYA, KUALA LUMPUR
ROZ MAWAR ROZAIN J
[CIVIL SUIT NO: WA-23CY-51-10-2020]
14 NOVEMBER 2025

Abstract – *(i) The defence of fair comment succeeds where the impugned words are identifiable as opinion on a matter of public interest, provided they are based on established facts; (ii) The defence of neutral reportage protects the media when they publish defamatory statements made by a third party, provided: (a) the publication is in the public interest; (b) the journalist/publisher remains disinterested and neutral, neither embellishing nor adopting the assertions as their own truth; and (c) the publisher provides the aggrieved party an opportunity to respond, demonstrating good faith and a lack of malice.*

TORT: *Defamation – Libel – Articles published on news portal regarding politician – Allegations of sexual misconduct and unfitness for public office – Whether words defamatory – 'Lesser sting' – Whether words capable of lowering claimant's reputation in estimation of right-thinking persons – Contextual interpretation*

TORT: *Defamation – Defences – Fair comment – Ingredients – Articles published on news portal – Political controversy surrounding admission into new political party – Whether impugned words statements of fact or comments – Whether based on true and existing facts – Whether matter of public interest – Whether fair-minded person could honestly hold such opinions – Whether defence established*

TORT: *Defamation – Defences – Qualified privilege – Neutral reportage and responsible journalism – Political controversy surrounding admission into new political party – Publication by media of third-party assertions – Whether reportage disinterested and neutral – Whether media adopted or embellished allegations – Whether public interest served – Whether malice established*

The present defamation suit brought by the plaintiff, a politician, against the defendants arose from the publication of two articles. The plaintiff contended that (i) the two articles contained highly defamatory allegations against him, including implications that he was a rapist whose victim was a minor; (ii) the defendants were fully aware of the article that contained the alleged words of slander; and (iii) the first defendant, a member of the Democratic Action Party ('DAP'), and DAP were also fully aware of the article that contained the alleged words of slander against him was wholly unfounded, untrue and false because: (a) in 2003, the plaintiff initiated a suit against DAP for similar

allegations that resulted in a settlement when DAP read out a statement/ apology in court to the plaintiff, acknowledging that its allegation, in particular on the issue of rape/statutory rape, was wholly unfounded; (b) pursuant to that, DAP had published the apology on its website; and (c) the second defendant, the owner and publisher of www.malaysiakini.com, had reported this matter with the publication entitled 'Rahim Thamby Chik drops suit after DAP concedes mistake' on the said online news portal. This article was within the knowledge of the third defendant as the editor-in-chief. The first defendant and DAP raised the defences of justification, fair comment, qualified privilege, freedom of speech and lesser meaning. The second and third defendants, on the other hand, raised the defences of fair comment, qualified privilege/responsible journalism, neutral reportage and freedom of press.

Held (dismissing suit):

(1) The whole text, its thrust and context, including contemporaneous public knowledge was examined. The plaintiff's own Facebook post dated 31 May 2015, acknowledging investigation, and resignation in 1994, formed part of the backdrop a reasonable reader brings to bear. Measured against that backdrop, and setting aside any extreme 'rapist' imputation, the publications did convey a lesser but serious sting: that the plaintiff was a politically controversial figure linked to grave sexual misconduct allegations and that his character/past rendered him unfit for public office. That lesser sting was capable of lowering him in the estimation of right-thinking persons. (paras 95 & 96)

(2a) The defence of fair comment protects the expression of opinion on a matter of public interest, provided certain conditions are met, namely: (i) the defendants must show that impugned words one and two were comments or included inferences of fact and not merely statements of fact; (ii) they concerned a matter of public interest; (iii) they were based on facts where the underlying material facts necessary to form the basis of the comments must be true and existing; and (iv) they were those which a fair-minded person can honestly make on the facts proved. (para 101)

(2b) With regard to the first two elements, the titles to the publications 'Khianat jika Rahim diterima masuk Bersatu – Pemuda DAP' and 'Permohonan Rahim sekiranya diterima akan ditafsir sebagai pengkhianatan' plainly signalled opinion and political comments on a matter of public interest. For the third element, the underlying facts relied on included: (i) coalition solidarity dynamics; (ii) the plaintiff's role in the 'Dato Trio' episode and resulting conviction; and (iii) concerns over admitting a controversial figure into Parti Pribumi

Bersatu Malaysia ('PPBM') at the material time. These facts were either undisputed or sufficiently established. As to the fourth element, the opinions expressed fell within the range a fair-minded person could honestly hold on to those facts. The defence of fair comment therefore succeeded for the first defendant for impugned words one and two and as regards impugned words one, likewise protected the second and third defendants who published an evident opinion piece. (paras 102-104)

(3a) The article was plainly the first defendant's opinion piece, presented as such; the second and third defendants framed it as his view, identified him and his position and did not embellish or adopt his assertions. The publication of the first defendant's comments had linked reports on the matter as well. The second and third defendants did not adopt the report in the sense of taking sides on that which it reported and must make it in a disinterested and neutral way. Given the political context in 2018, *ie*, party-hopping controversies, PPBM's coalition position, the plaintiff's announced departure from UMNO and application to join PPBM, the public interest was clear. The defence of reportage was made out for the second and third defendants. (paras 108-110)

(3b) Way before the publication, the facts on which impugned words one were based were already widely circulated and reported. The publication and also many others relating to the same issue, were neutrally covered by the second defendant. The second and third defendants had given the plaintiff the opportunity to publish his version of events, to show that they were not taking sides. They had iterated clearly that they were carrying out their job in good faith to inform citizens of public interest. The plaintiff had refused to do so and did not raise the articles printed in 2003. Alleged malice, based on DAP's 2003 acceptance that similar allegations were unfounded, was not established on the evidence. There was insufficient proof that they acted with a dominant improper motive to defeat fair comment or qualified privilege. There was no malice on the part of the second and third defendants. The defence of reportage available to the second and third defendants was clearly not defeated. (paras 111-114)

(4) While impugned words one and two were defamatory in fact (in the lesser sense), the applicable defences succeeded. Consequently, the plaintiff failed to prove its case on a balance of probabilities against all the defendants. (para 121)

Case(s) referred to:

Chok Foo Choo v. The China Press Bhd [1999] 1 CLJ 461 CA ***(refd)***

Chong Chieng Jen v. Government Of State Of Sarawak & Anor [2019] 1 CLJ 329 FC ***(refd)***

Dato' Seri Anwar Ibrahim v. The New Straits Times Press (M) Sdn Bhd & Anor [2010] 5 CLJ 301 HC ***(refd)***

JB Jeyaretnam v. Goh Chok Tong [1984] CLJU 139; [1984] 1 LNS 139 HC ***(refd)***

Keluarga Communication Sdn Bhd v. Normala Samsudin & Another Appeal [2006] 2 CLJ 46 CA ***(refd)***

Lewis v. Daily Telegraph Ltd [1963] 2 All ER 151 ***(refd)***

Lim Guan Eng v. PP & Other Appeals [1998] 3 CLJ 769 CA ***(refd)***

Lim Guan Eng v. Ruslan Kassim & Another Appeal [2021] 4 CLJ 155 FC ***(dist)***

Liu Thian Leong & Ors v. Jee Nyen Chong & Ors [2021] 9 CLJ 715 CA ***(refd)***

Mkini Dotcom Sdn Bhd & Ors v. Raub Australian Gold Mining Sdn Bhd [2021] 7 CLJ 145 FC ***(refd)***

Mohamed Hafiz Mohamed Nordin v. Eric Paulsen & Another Appeal [2018] CLJU 1731; [2018] 1 LNS 1731 CA ***(dist)***

Nurul Izzah Anwar v. Tan Sri Khalid Abu Bakar & Anor [2018] 7 CLJ 622 HC ***(refd)***

Roberts v. Gable [2008] QB 502 ***(refd)***

Syed Husin Ali v. Sharikat Penchetakan Utusan Melayu Bhd & Anor [1973] CLJU 146; [1973] 1 LNS 146 HC ***(refd)***

Tim Yeo MP v. Times Newspapers Ltd [2014] EWHC 2853 (QB) ***(refd)***

Tun Datuk Patinggi Hj Abdul Rahman Ya'kub v. Bre Sdn Bhd & Ors [1995] CLJU 304; [1995] 1 LNS 304 HC ***(refd)***

Wallis v. Valentine [2002] EWCA Civ 1034 ***(refd)***

Yokomasu Marketing Sdn Bhd & Anor v. Chor Tse Min [2017] CLJU 1902; [2017] 1 LNS 1902 CA ***(refd)***

Yuvarani Ravindra v. Percetakan Kum Sdn Bhd & Ors And Another Case [2010] 9 CLJ 95 HC ***(refd)***

Legislation referred to:

Federal Constitution, arts. 5, 8, 10(1)(a)
Penal Code, ss. 109, 292(a)
Rules of Court 2012, O. 78 r. 3
Societies Act 1966, s. 9(c)

For the plaintiff - Firoz Hussein, Frida Krishnan, Choo Shi Jin & Harel Nieryan; M/s Firoz Julian

For the 1st, 4th, 5th & 6th defendants - Sangeet Kaur Deo, Ganeraja Krishnan, Harshan Zamani, Tan Chee Kian, Harkiranjit Kaur, Simranjit Kaur & Kumarendran; M/s Karpal Singh & Co

For the 2nd & 3rd defendants - Kee Hui Yee, Jowyn Saw & Tan Xu Yin; M/s Kanesalingam & Co

Reported by Lina E

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JUDGMENT

Roz Mawar Rozain J:

[1] No stranger in the arena of Malaysian politics, the plaintiff served as a Member of Parliament (ADUN) for the Kelemek, Melaka constituency in 1982, having previously been appointed as Chief Minister of Melaka for the first time. In 1986, he was re-elected as ADUN for the Masjid Tanah, Melaka constituency and continued as Chief Minister.

[2] In 1990, he was once again re-elected as ADUN for Masjid Tanah and continued serving as Chief Minister until he resigned from this position in October 1994. In 1993, he was elected as Youth Leader of United Malays Organisation (UMNO) and held this position until October 1994, before being reinstated as Youth Leader of UMNO in September 1996. The plaintiff also served as Deputy Home Minister of Malaysia between 1981 and 1982. The plaintiff resigned as a member of UMNO on 29 February 2020. According to him, he is presently an active member of Parti Pribumi Bersatu Malaysia (PPBM) and an active politician and businessman.

[3] The first defendant is a member of the Democratic Action Party (DAP), was the DAP Socialist Youth National Chief, Deputy Youth Leader of Pakatan Harapan, and the State Assemblyman for the constituency of Pasir Pinji, Perak. He is currently the Member of Parliament for the Ipoh Timor constituency. He is the author of the article that the plaintiff contends contains defamatory words titled "Khianat jika Rahim terima masuk Bersatu – Pemuda DAP". This article was published and disseminated by the second defendant on its Malaysiakini news portal on 16 December 2018. The article is freely accessible through http://www.malaysiakini.com/news/456450 even up to this day of judgment.

[4] The second defendant is the owner and publisher of the online news portal www.malaysiakini.com, with its registered address at No 8-1, Jalan Prima Setapak 3, off Jalan Genting Kelang, Setapak 53300 Kuala Lumpur. The third defendant was the editor of www.malaysiakini.com. The third defendant is the Editor-in-Chief of the second defendant.

[5] The fourth to sixth defendants are also familiar personas in the political realm, and they are being sued respectively in their capacities as office bearers of DAP as provided under s. 9(c) of the Societies Act 1966. The fourth defendant is the National Chairman of DAP, the fifth defendant its Deputy Chairman and the sixth defendant the Secretary General. An article titled "Permohonan Rahim sekiranya diterima akan ditafsir sebagai pengkhianatan" was published on the DAP website www.dapmalaysia.org https://dapmalaysia.org.statements/2018/12/16/28004. The plaintiff alleges that this article had been written, published and/or caused to be published by the first defendant and DAP on the said website.

[6] This defamation suit brought by the plaintiff against the six defendants arose from the publication of two articles on 16 December 2018, which the plaintiff contends contained highly defamatory allegations against him, including implications that he was a rapist whose victim was a minor. The plaintiff contends that the defendants were fully aware of the article that contained alleged words of slander, and that the first defendant and DAP were also fully aware of the article that contained alleged words of slander against him was wholly unfounded, untrue and false because:

(i) in 2003, the plaintiff initiated a suit against DAP for similar allegations that resulted in a settlement when DAP read out a statement/apology in court to the plaintiff on 21 October 2003, acknowledging that its allegation in particular, on the issue of rape/statutory rape, was wholly unfounded;

(ii) pursuant to that, DAP had carried/published the apology on its website www.dapmalaysia.org on 21 October 2003; and

(iii) the second defendant had reported this matter with the publication entitled "Rahim Thamby Chik drops suit after DAP concedes mistake" on the online news portal of www.malaysiakini.com on 21 October 2003. This article was within the knowledge of the third defendant as Editor-in-Chief.

[7] In determining the plaintiff's suit, some important questions about the boundaries of political discourse, the responsibilities of media organisations in republishing political statements, and the extent to which historical allegations can be resurrected in public debate without verification, are placed together with the issues of law in the forefront. This suit also engages this court in considering the evolving defence of reportage in our Malaysian jurisprudence, particularly following the Federal Court's guidance in *Mkini Dotcom Sdn Bhd & Ors v. Raub Australian Gold Mining Sdn Bhd* [2021] 7 CLJ 145.

[8] In this suit, it is imperative to weigh in the background facts which are stipulated below.

The Background Facts

The 1994 Scandal And Its Historical Context

[9] Central to understanding this case is an incident from 1994 that has cast a long shadow over the plaintiff's public life. In that year, allegations emerged involving a 14-year-old schoolgirl (Noryati Mohamed Yusop). The matter was investigated by the authorities, and the plaintiff himself was investigated in relation to the allegations.

[10] The girl in question was detained and investigated. Court's records before this court show that she made police reports against 14 other individuals alleging sexual relations. Eight of these individuals pleaded guilty and were sentenced, while others chose to claim trial. The plaintiff, who was also alleged for the same, while subject to investigation, did not result in criminal prosecution or conviction.

[11] This scandal led to significant political consequences for the plaintiff. He resigned as the Chief Minister of Malacca in October 1994, citing the need to clear his name and avoid embarrassment to the Government. He also resigned from his party post as UMNO Youth Head. The political fallout was immediate and severe, affecting his trajectory within UMNO's senior leadership.

The Dato Trio's Incident

[12] Separately, the plaintiff was involved in what became known as the 'Dato Trio' case. On 15 December 1996, the plaintiff was charged under ss. 292(a) and 109 of the Penal Code for screening and abetting the screening of pornographic material at a hotel. He pleaded guilty to those charges and was fined RM2,000 for each charge. This conviction is a matter of public record and was admitted by the plaintiff during cross-examination.

The 2003 DAP Litigation And Statement

[13] Of particular significance to the present proceedings is the fact that in 2003, the plaintiff initiated legal proceedings against DAP for defamation relating to similar allegations about the 1994 scandal. That litigation was resolved when, for DAP, a statement was read out in open court on 21 October 2003. For context of the plaintiff's case, the statement by the DAP is produced herein:

> Statement by the Democratic Action Party
>
> We, the Democratic Action Party, hereby refer to the Book published by us entitled "Lim Guan Eng – MP in Jail" ("Book") and to the Poster ("Poster") campaign which we embarked on relating to the Plaintiff, Tan Sri Abdul Rahim Bin Datuk Tamby Chik, and we hereby make the following statements:
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> (1) We must stress we made the allegations relating to Tan Sri Abdul Rahim Bin Datuk Tamby Chik contained in the Book and Poster as we believed them to be true at the material time based on the statements made by Pendek binti Amhad to Mr Lim Guan Eng and by Noryati Binti Mohamad Yusop and ACP Mok at the High Court, Melaka, in Criminal Trial Nos: 45-2-1995 and 45-3-1995 (Pendakwa Raya v. Lim Guan Eng).
>
> (2) However, in view of subsequent events, in particular
>
> (a) the retraction of the allegations by Noryati Binti Mohamad Yusop under oath by way of a Statutory Declaration; and

(b) the fact that similar allegations made by Time Magazine and Asiaweek have resulted in an apology being given to Tan Sri Abdul Rahim Bin Datuk Tamby Chik;

We now realize that the basis for the allegations we made against Tan Sri Abdul Rahim Bin Datuk Tamby Chik in the Book and Poster no longer exists and in view of this, the said allegations are wholly unfounded.

(3) Accordingly we acknowledge that these unfortunate events have caused all parties concerned, Including Tan Sri Abdul Rahim Bin Datuk Tamby Chik and family, great distress and anguish.

(21st October 2003)

[14] Translated, DAP withdrew any allegation or implication that the plaintiff had committed rape or statutory rape of an underage girl, acknowledged that such allegations became "tidak berasas" (unfounded) due to the transpiration of subsequent events. DAP acknowledged the great distress and anguish caused to the plaintiff and his family.

[15] The subsequent events included the fact that the then Attorney-General revealed that some of the reasons for not pursuing prosecution against the plaintiff were because Noryati Mohamed Yusop had lodged 17 police reports against 14 individuals for having had sexual relations with her. Four years after the 1994 scandal, Noryati Mohamed Yusop's declaration came to the public light wherein she stated that she did not have intimate relations with the plaintiff.

[16] This statement was published on DAP's website on 21 October 2003 and was also reported by the second defendant in an article titled "Rahim Thamby Chik drops suit after DAP concedes 'mistake'". The Star online had also published this news with the headline "Rahim withdraws suit after DAP reads statement in court".

The 14th General Election (2018)

[17] History was created when the Pakatan Harapan coalition swept the elections to win over the Barisan Nasional Coalition that had governed the country since independence. The Pakatan Harapan coalition comprised of PPBM, DAP, Parti Keadlian Rakyat (PKR) (of which Dato Seri Anwar Ibrahim was the leader of) and AMANAH. It had just taken over the ruling of the country at the material time of the publications.

The Plaintiff's Facebook Post

[18] The heat from the historic 14th General Election in March 2018 still has not abated, and the new Government assembling itself to helm the nation, the plaintiff posted on his own Facebook page on 31 May 2018 the following:

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facebook Open app Log In

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← Rahim's post

Ketika saya dianggap the Rising Star didlm Umno satu ketika dulu, ramai juga yg bertanggapan saya juga the Blue Eyed of Mahathir (PM ke4) disebabkan;

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1. "Transformasi Melaka" dari sebuah negeri yg miskin dan amat mundur kpd sebuah ekonomi yg maju, vibrant dan dinamik sehingga sekarang berlaku semasa saya memegang jawatan Ketua Menteri Melaka ke6 dimana kesinambungan

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pembangunannya yg peast ditokok tambah oleh Ketua2 Menteri salepas saya.

2. "Program Larian Pemuda Nasional" ketika saya memegang jawatan Ketua Pemuda Umno

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Malaysia telah memperkasakan imej dan reputasi Pemuda Umno sebagai penggerak dan pelindung utama Umno dan Melayu di negara ini bersendikan penghayatan patriotisme yg mendalam dan kental dikalangan ahli2 Umno dan

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Melayu umumnya.

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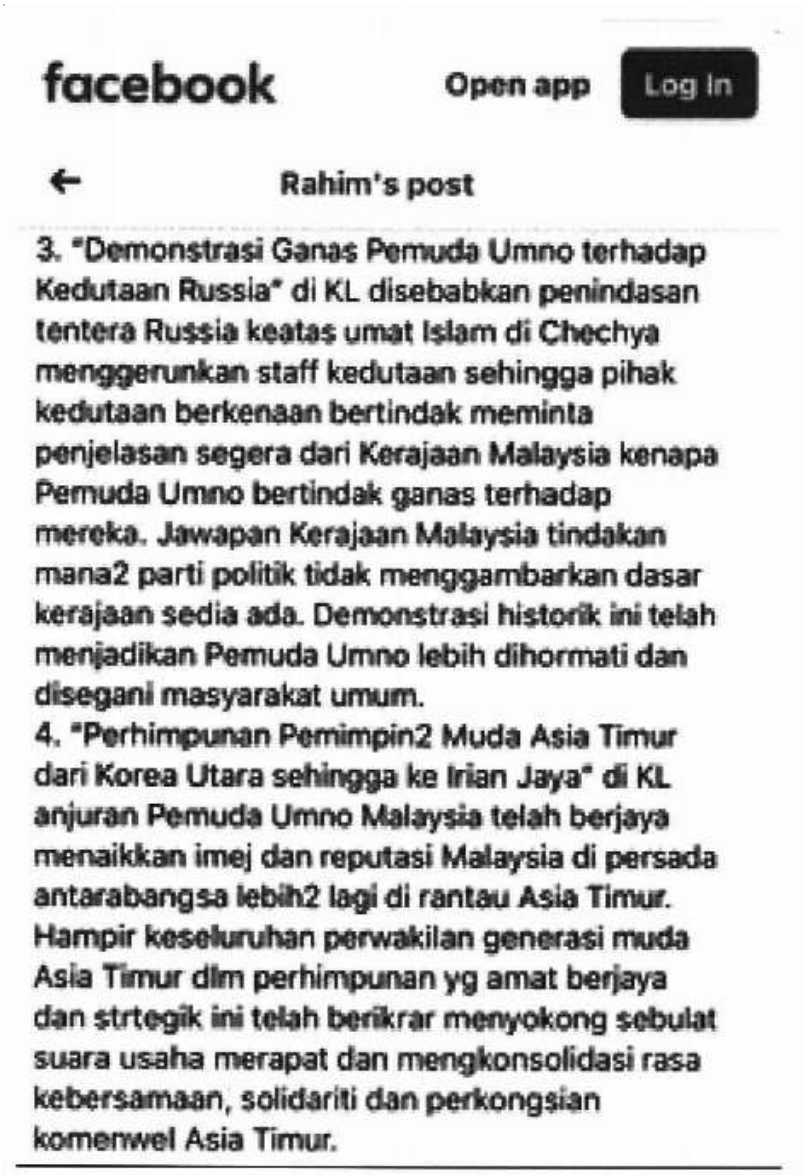

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← Rahim's post

3. "Demonstrasi Ganas Pemuda Umno terhadap Kedutaan Russia" di KL disebabkan penindasan tentera Russia keatas umat Islam di Chechya menggerunkan staff kedutaan sehingga pihak kedutaan berkenaan bertindak meminta penjelasan segera dari Kerajaan Malaysia kenapa Pemuda Umno bertindak ganas terhadap mereka. Jawapan Kerajaan Malaysia tindakan mana2 parti politik tidak menggambarkan dasar kerajaan sedia ada. Demonstrasi historik ini telah menjadikan Pemuda Umno lebih dihormati dan diseganI masyarakat umum.

4. "Perhimpunan Pemimpin2 Muda Asia Timur dari Korea Utara sehingga ke Irian Jaya" di KL anjuran Pemuda Umno Malaysia telah berjaya menaikkan imej dan reputasi Malaysia di persada antarabangsa lebih2 lagi di rantau Asia Timur. Hampir keseluruhan perwakilan generasi muda Asia Timur dlm perhimpunan yg amat berjaya dan strtegik ini telah berikrar menyokong sebulat suara usaha merapat dan mengkonsolidasi rasa kebersamaan, solidariti dan perkongsian komenwel Asia Timur.

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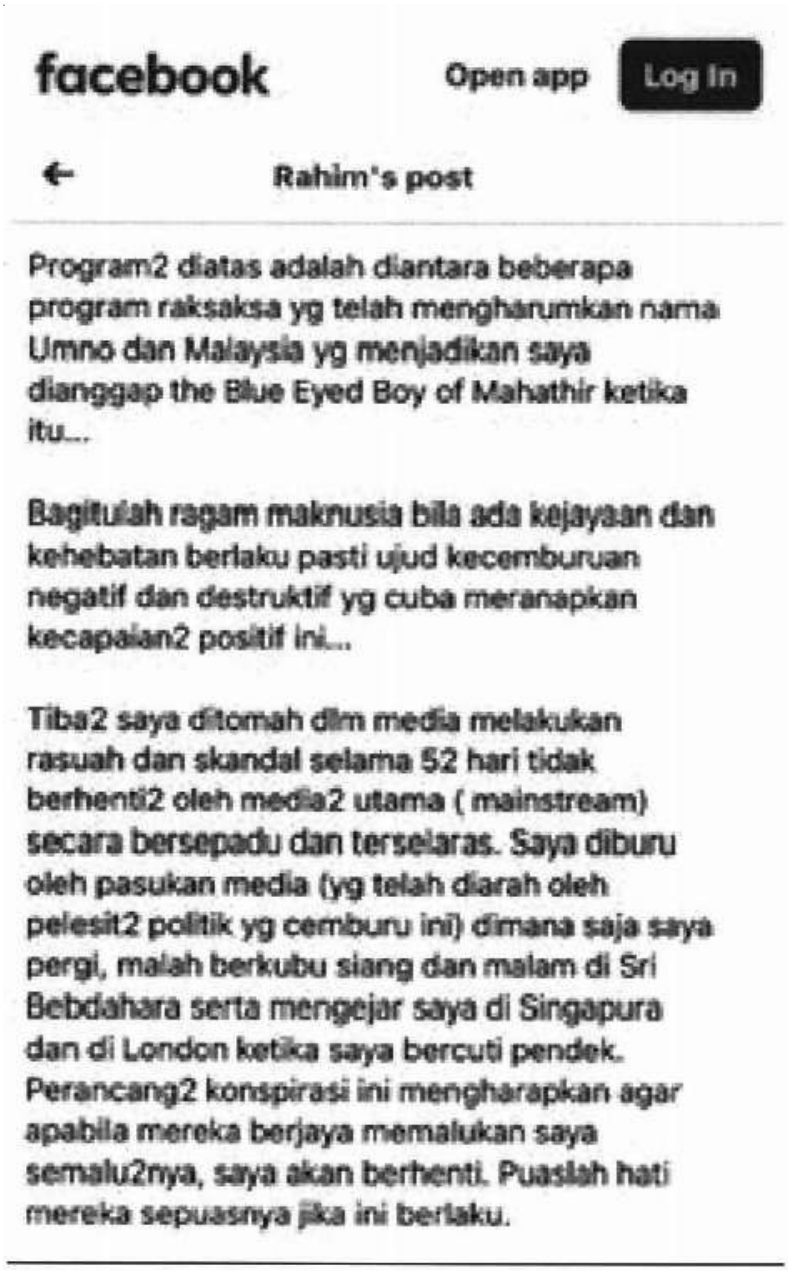

facebook Open app Log In

← Rahim's post

Program2 diatas adalah diantara beberapa program raksaksa yg telah mengharumkan nama Umno dan Malaysia yg menjadikan saya dianggap the Blue Eyed Boy of Mahathir ketika itu...

Bagitulah ragam maknusia bila ada kejayaan dan kehebatan berlaku pasti ujud kecemburuan negatif dan destruktif yg cuba meranapkan kecapaian2 positif ini...

Tiba2 saya ditomah dlm media melakukan rasuah dan skandal selama 52 hari tidak berhenti2 oleh media2 utama (mainstream) secara bersepadu dan terselaras. Saya diburu oleh pasukan media (yg telah diarah oleh pelesit2 politik yg cemburu ini) dimana saja saya pergi, malah berkubu siang dan malam di Sri Bebdahara serta mengejar saya di Singapura dan di London ketika saya bercuti pendek. Perancang2 konspirasi ini mengharapkan agar apabila mereka berjaya memalukan saya semalu2nya, saya akan berhenti. Puaslah hati mereka sepuasnya jika ini berlaku.

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← Rahim's post

Pendekan cerita, saya berjumpa PM menyatakan pendirian saya bahawa saya bersedia melepaskan jawatan2 saya buat sementara waktu bg membolehkan penyiasatan dibuat tanpa gangguan posisi rasmi saya dlm kerajaan demi menjaga reputasi dan kewibawaan parti yg telah teruk dirosakkan oleh pihak media. Keganasan media menyerang saya walaupun saya tidak bersalah adalah di luar sempadan kemanusiaan, dimotivasi oleh konspirasi ciptaan pemimpin2 pelesit tadi.

Akhirnya bila saya disiasat, pakar forensik dari Hospital KL memberitahu saya bahawa ada 3 bukti yg terdapat di tubuh saya yg menjadi bukti terpenting (conclusive evidence) berkaitan dgn tuduhan skandal saya.

Bila habis siasatan rapi dan komprehensif ini, pakar forensik memberitahu saya bahawa kesemua bukti yg telah dikemukakan oleh polis kpdnya adalah TIDAK BENAR dan TIDAK UUD sama sekali. Dia memberitahu saya agar ambil tindakan undang2 terhadap semua pihak yg memfitnah saya. Dia meminta saya merahsiakan apa yg dia diberitahu tadi. Mungkin dia kesian melihatkan trauma dan penganiayaan terhadap saya dan keluarga saya alami selama ini... hanya Allah saja yg Mengetahui!

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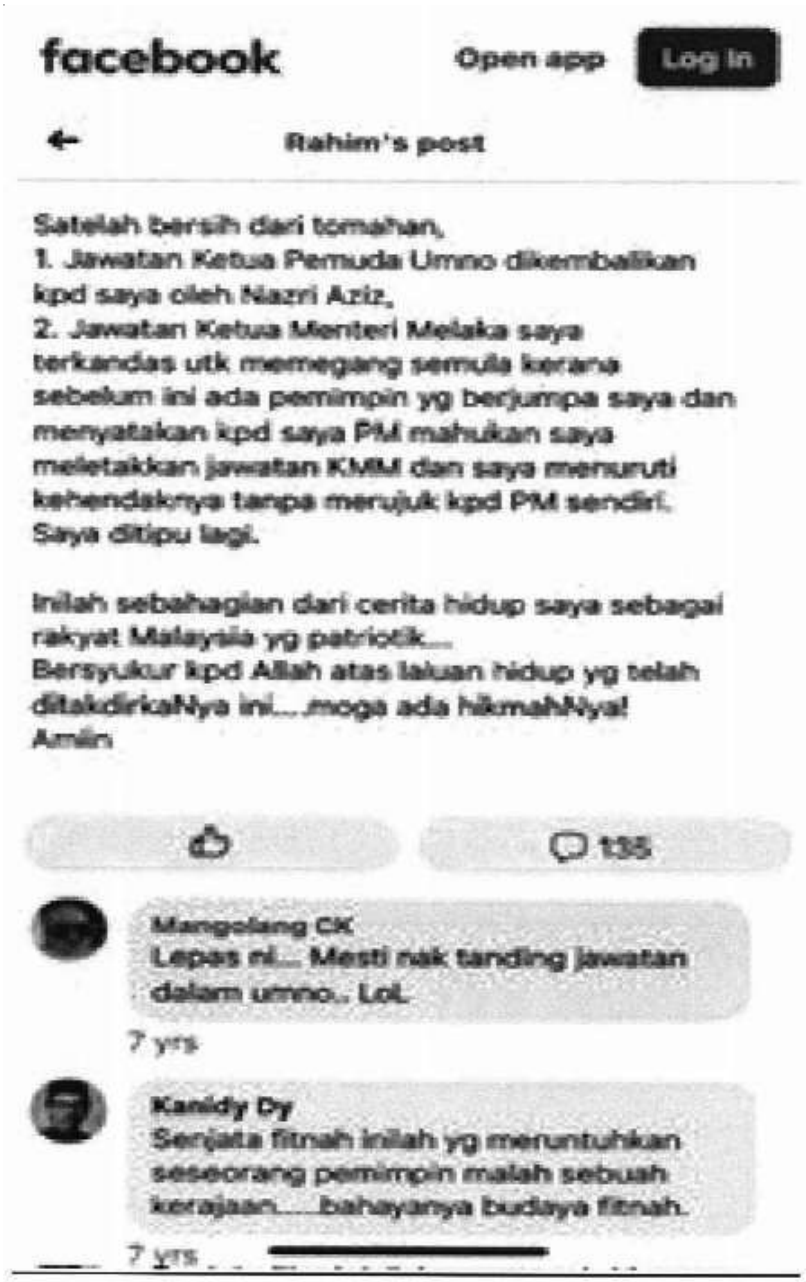
facebook
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Rahim's post
Setelah bersih dari tomahan,
1. Jawatan Ketua Pemuda Umno dikembalikan kpd saya oleh Nazri Aziz,
2. Jawatan Ketua Menteri Melaka saya terkandas utk memegang semula kerana sebelum ini ada pemimpin yg berjumpa saya dan menyatakan kpd saya PM mahukan saya meletakkan jawatan KMM dan saya menuruti kehendaknya tanpa merujuk kpd PM sendiri. Saya ditipu lagi.
Inilah sebahagian dari cerita hidup saya sebagai rakyat Malaysia yg patriotik....
Bersyukur kpd Allah atas laluan hidup yg telah ditakdirkaNya ini....moga ada hikmahNya!
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Lepas ni... Mesti nak tanding jawatan dalam umno.. LoL
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Senjata fitnah inilah yg meruntuhkan seseorang pemimpin malah sebuah kerajaan.....bahayanya budaya fitnah.
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[19] As can be seen, this posting by the plaintiff attracted a few hundred comments and numerous reposts. At that point in time, the 1994 scandal was 24 years past. Before this plaintiff's Facebook posting, it last appeared before the public eyes 15 years ago in 2003 when the DAP litigation was resolved with statement as stated above.

[20] However, due to his own public posting, the media picked up on with The Star publishing an article later in the same day "Rahim Thamby Chik claims to be high profile victim of jealousy in 1994". The Malay Mail on the same day published an article on the contents of the plaintiff's Facebook posting titled "After 24 years, Rahim Thamby Chik claim statutory rape probe a 'conspiracy' against Dr M".

The 2018 PPBM Application

[21] Six months after the plaintiff's Facebook posting, in December 2018, the plaintiff applied to join PPBM, a key component of the ruling Pakatan Harapan coalition. This application came after more than two decades of relative political dormancy following the plaintiff's 1994 resignation.

[22] Malaysiakini online news portal owned by the second defendant carried that news on 16 December 2018 at www.malaysiakini.com/news/456410 that carried the title "Ex-CM whose case led to Guan Eng's jailing applies to join BERSATU". It referred to another news agency report that informed the plaintiff had submitted his application along with 100 other former UMNO members.

[23] Cited in the publication is the plaintiff who had stated "I am sad to leave UMNO after more than 40 years struggling for the Malays in the party. But I am quitting (UMNO) because BERSATU can now defend the Malays better, as UMNO no longer has the capacity to function for the Malay struggle". The plaintiff added that UMNO's mistake was to engage in corruption to the extent that the culture had become irreversible.

[24] The publication stated that the plaintiff was part of the Dato Trio who screened a sex video to journalists in 2011 when they had claimed that it was of Dato Seri Anwar Ibrahim, and the latter had denied the allegation.

[25] The related reports linking to this publication were numerous reports on defections, party-hopping and PPBM's position on the matter.

[26] The plaintiff's application generated significant public discourse about party-hopping and the standards expected of those joining the reform-oriented coalition. It was in this context that the first defendant issued his media statement on 16 December 2018, which forms the subject matter of this suit.

[27] One such opinion published on the same day in response to the reported news on the plaintiff's application to PPBM is found on www.malaysiakini.com/news/456429. Kota Melaka MP urged PPBM to strongly reject the acceptance of the plaintiff's application. A narration of the 1994 scandal and that the plaintiff was not convicted of it, and also the urging to prevent unethical party-hopping formed the content of this news report under the titles "Citing sex video, DAP MP urges BERSATU to snub ex-CM".

[28] Related reports to this article are:

(i) "Muhyiddin addresses ex-CM's 'bad history' with Anwar, Guan Eng";

(ii) "ex-CM whose case led to Guan Eng's jailing applies to join Bersatu";

(iii) "many UMNO members want to join AMANAH, says Mat Sabu"; and

(iv) "UMNO veep says divisions can push for EGM on Zahid".

[29] Other reports included a write up by Astro Awani titled "Saya benar-benar sedih tinggalkan UMNO, tetapi ..." Rahim Thamby Chik.

The Publications

[30] The first defendant had written the publication as a response to the plaintiff's application to join PPBM, which at the time, also prompted responses from many others.

[31] On 16 December 2018, two publications appeared almost simultaneously:

(i) the first publication appeared on Malaysiakini under the headline "'Khianat' jika Rahim diterima masuk Bersatu – Pemuda DAP" (translated to "'Betrayal' if Rahim accepted into Bersatu – DAP Youth"); and

(ii) the second publication appeared on the DAP website under the headline "Permohonan Rahim sekiranya diterima akan ditafsir sebagai pengkhianatan" (translated to "Rahim's application if accepted will be interpreted as betrayal").

[32] Both publications contained substantially similar content, being the first defendant's media statement, though with some notable differences that would become significant in these proceedings. The online news portal of the Malaysiakini that belonged to the second defendant published a version that had removed the sentence "Perogol itu masih bebas berleluasa" ("The rapist is still at large") while the DAP website published the statement in its entirety.

[33] The publications rapidly gained traction on social media and were widely circulated, reviving public discussion about events from nearly 25 years prior and generating fresh controversy about the plaintiff's attempted political return.

[34] Two years later, the plaintiff, through his solicitors, issued a letter of demand dated 6 August 2020. The second and third defendants responded on 9 August 2020, offering the plaintiff an opportunity to reply to the article that was published two years prior. This offer was not taken up by the plaintiff, who proceeded to file this action on 21 July 2020.

[35] The article authored by the first defendant on 16 December 2018 published on the second defendant's online news portal takes in this form when printed:

> Berita
>
> 'Khianat' jika Rahim diterima masuk Bersatu – Pemuda DAP
>
> Howard Lee Chuan How
>
> Diterbitkan: Dec 16, 2018 10.25 PM Dikemaskini: 10.31 PM
>
> ULASAN | Mungkin ada di antara kita telah lupa akan penderitaan yang ditanggung Puan Pendek binti Ahmad yang mengetahui cucu perempuannya, Noryati binti Mohamad Yusop yang ketika itu berumur 14 tahun dirogol.
>
> Mungkin juga tak ramai yang ingat pemenjaraan Menteri Kewangan Lim Guan Eng ketika beliau masih seorang wakil rakyat pembangkang pada tahun 1998.
>
> Beliau yang membela penderitaan Noryati dan Puan Pendek pula dihumban ke penjara.
>
> Tetapi keluarga Lim dan keluarga Noryati binti Mohamad Yusop ingat. Rakyat yang prihatin juga ingat. Semua mereka yang berjuang sejak awal masih ingat.
>
> Rahim Thamby Chik tidak pernah muncul apabila Dr Mahathir Mohamad membuat keputusan untuk berganding dengan Anwar Ibrahim dalam menyelamatkan negara menentang Umno dan BN.
>
> Salah seorang 'Trio Datuk'
>
> Perjuangan dan pengorbanan telah menghasilkan kemenangan rakyat – dan si Rahim Thamby Chik tidak ada sebarang titik peluh keringat langsung yang menyumbangkan ke arah perjuangan ini.
>
> Malah, si politikus inilah yang merupakan salah seorang dari 'Trio Datuk' telah menyerang Anwar Ibrahim dengan telatah politik fitnah, menayangkan video lucah yang beliau dakwa merakamkan aksi seorang lelaki mirip Anwar Ibrahim mengadakan hubungan seks dengan pelacur.

A Permohonan Rahim Thamby Chik untuk memasuki Bersatu, adalah hak beliau sendiri. Tetapi terima atau tidak adalah hak pimpinan parti Bersatu.

Bersatu adalah parti yang kami hormati sebagai rakan seperjuangan, yang telah berganding bahu, berputih tulang bersama dengan Amanah dan PKR, membebaskan negara kita dari cengkaman Umno.

B Kita mempunyai setiakawan dan persahabatan yang telah teruji dan tetap kukuh.

Penerimaan Rahim Thamby Chik akan dibaca dan ditafsir oleh rakyat sebagai suatu pengkhianatan kepada setiakawan dan persahabatan yang telah kita jalin sepanjang perjuangan. Harap maklum.

C Baca Berkaitan:

Muhyiddin ulas 'sejarah buruk' Rahim dengan Anwar, Guan Eng

Howard Lee Chuan How ialah Ketua Pemuda DAP dan Timbalan Ketua Pemuda PH serta merangkap exco pembangunan belia dan sukan Perak.

D Tulisan ini tidak mencerminkan pendirian rasmi redaksi Malaysiakini.

[36] The plaintiff sues the first defendant, the second defendant, and the third defendant, alleging that the following statements, not the entire article, which are defamatory to him (impugned words one):

E Mungkin ada di antara kita telah lupa akan penderitaan yang ditanggung Puan Pendek binti Ahmad yang mengetahui cucu perempuannya, Norhayati binti Mohamad Yusop yang ketika itu berumur 14 tahun dirogol.

Mungkin juga tak ramai yang ingat pemenjaraan Menteri Kewangan Lim Guan Eng ketika beliau masih seorang wakil rakyat pembangkang pada
F tahun 1998.

... Beliau yang membela penderitaan Norhayati dan Puan Pendek pula dihumban ke penjara.

Tetapi keluarga Lim dan keluarga Norhayati bin Mohamad Yusop ingat.

G Rakyat yang prihatin juga ingat. Semua mereka yang berjuang sejak awal masih ingat.

[37] The other article published on the same day, written by the first defendant, was published on the DAP's website. The plaintiff sues the first defendant and DAP – the fourth defendant, the fifth defendant, and the sixth
H defendant for this publication. The printed version takes on the form below:

Permohonan Rahim sekiranya diterima akan ditafsir sebagai pengkhianatan

Mungkin ada di antara kita telah lupa akan penderitaan yang ditanggung Puan Pendek binti Ahmad yang mengetahui cucu perempuannya, Noryati
I binti Mohamad Yusop yang ketika itu berumur 14 tahun dirogol. Perogol itu masih bebas berleluasa.

Mungkin juga tak ramai yang ingat pemenjaraan Menteri Kewangan Pakatan Harapan ketika beliau masih seorang wakil rakyat pembangkang pada tahun 1998. Beliau yang membela penderitaan Noryati dan Puan Pendek pula dihumban ke penjara.

Tetapi keluarga YB Lim Guan Eng dan keluarga Noryati binti Mohamad Yusop ingat. Rakyat yang prihatin juga ingat. Semua mereka yang berjuang sejak awal masih ingat.

Rahim Thamby Chik tidak pernah muncul apabila Tun Mahathir membuat keputusan untuk berganding dengan Dato Seri Anwar Ibrahim dalam menyelamatkan Negara menentang UMNO dan BN. Perjuangan dan pengorbanan telah menghasilkan kemenangan rakyat – dan si Rahim Thamby Chik tidak ada sebarang titik peluh keringat langsung yang menyumbangkan ke arah perjuangan ini.

Malah, si politikus inilah yang merupakan salah seorang dari 'Trio Datuk' telah menyerang Dato Seri Anwar Ibrahim dengan telatah politik fitnah, menayangkan video lucah yang beliau dakwa merakamkan aksi seorang lelaki mirip Dato Seri Anwar Ibrahim mengadakan hubungan seks dengan pelacur.

Permohonan Rahim Thamby Chik untuk memasuki Bersatu, adalah hak beliau sendiri. Tetapi terima atau tidak adalah hak pimpinan parti Bersatu.

BERSATU adalah parti yang kami hormati sebagai rakan seperjuangan, yang telah berganding bahu, berputih tulang bersama dengan AMANAH dan KEADILAN, membebaskan negata kita dari cengkaman UMNO BN. Kita punya setiakawan dan persahabatan yang telah teruji dan tetap kukuh.

Penerimaan Rahim Thamby Chik akan dibaca dan ditafsir oleh rakyat sebagai suatu pengkhianatan kepada setiakawan dan persahabatan yang telah kita jalin sepanjang perjuangan.

Howard Lee Chuan How

Ketua Dapsy Kebangsaan & Adun Pasir Pinji

Kenyataan media oleh Howard Lee Chuan How di Ipoh pada hari Ahad, 16 Disember 2018

[38] The impugned words two which the plaintiff contends are defamatory, are identical except for the addition of this statement – "Perogol itu masih luas dan berleluasa". Although the link to this article is no longer accessible at the time of this judgment, the plaintiff submitted that at the material time, the DAP website was freely accessible by internet users worldwide and thus, the impugned words two have been published to readers in Malaysia and around the world.

A **The Pleadings**

[39] The summary of the plaintiff's claims is:

(i) words slander one – a claim for defamation against the first defendant for writing it and against the second defendant for publishing and disseminating the article on their news portal www.malaysiakini.com;

B

(ii) words slander two – a claim for libel against the first defendant for writing it and against the fourth, fifth and sixth defendants for publishing and/or causing the publication of the article on the DAP website; and

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(iii) the third defendant, the editor of Malaysiakini, is named as a party but does not seem to be directly implicated in the issues related to the two allegedly defamatory articles based on the pleadings.

[40] The plaintiff's central allegation is that the words, in their natural and ordinary meaning, imply that the plaintiff is a criminal. He asserts that the statements contain serious allegations implying that he is a rapist or was involved in sexual misconduct with an underage girl. The plaintiff's learned counsel submitted that the words "rogol" and "perogol" in both the publications referred specifically to the plaintiff and that he had committed the offence of rape and/or statutory rape against Noryati Mohamed Yusof, who was underage.

D

E

[41] The defendants raised multiple defences, aiming to show either that the words were not defamatory or that they were protected by established legal privileges. The first defendant and DAP denied that the words of slander one and words of slander two were defamatory of the plaintiff. Alternatively, they raised several pleaded defences:

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(i) justification: they contend that the impugned words one and two are true and justified. This court assesses below whether the first defendant and DAP have proven the truth or the substantial truth of the allegations;

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(ii) fair comment: they argued that impugned words one and two consist of expressions of opinion that are fair comment on matters of public interest. The first defendant and DAP rely on this alternative defence should this court rule that impugned words one and two are found to be defamatory;

H

(iii) qualified privilege: they asserted that the publication was made on an occasion of privilege;

(iv) freedom of speech: art. 10(1) of our Federal Constitution was relied on for the right to freedom of speech and expression;

I

(v) lesser meaning: the first defendant pleaded a lesser meaning contending that impugned words one and two merely imply that the plaintiff was linked to the scandal. The first defendant maintained he never implied

that the plaintiff was the rapist but only alluded to his involvement in the scandal, similar to what the plaintiff himself had previously done on social media. It was argued that the mere association of the plaintiff with the said 1994 scandal is not defamatory; and

(vi) denial of natural and ordinary meaning: the first defendant argued that the natural and ordinary meanings of impugned words one and two cannot bear the meanings pleaded by the plaintiff (*ie*, that he is the rapist). The first defendant and DAP also pointed out that no innuendo meaning was pleaded by the plaintiff, which would be necessary if special facts were to be derived from elsewhere.

[42] The second and third defendants generally denied that the impugned words one bore or were understood to bear any meaning defamatory to the plaintiff. They also raised the following defences:

(i) fair comment: they asserted that impugned words one consist of an expression of opinion, they are fair comments on matters of public interest;

(ii) qualified privilege/responsible journalism: they pleaded to the related defence known as responsible journalism;

(iii) neutral reportage: they contend that they are entitled to the defence of neutral reportage because they were reporting the fact that the first defendant made the statements and the overarching opinion of the first defendant relating to the plaintiff's PPBM application;

(iv) freedom of press: they relied on the fundamental liberties guaranteed under arts. 5, 8, and 10(1)(a) of our Federal Constitution to establish the rights to a free press; and

(v) impugned words one not defamatory: they contended the word "rogol" does not refer to the plaintiff and impugned words one are based on well-known facts already circulating widely, thus not introducing new defamatory imputations.

The Trial

[43] Over a course of ten days of trial, four witnesses testified. The plaintiff himself gave sworn testimony (PW2) as had the first defendant (DW1). Both were subjected to extensive cross-examination that swallowed most of the trial dates. The plaintiff had also called PW1 his former political secretary. The second and third defendants called DW2, the editor of Malaysiakini. The fourth to sixth defendants did not call any witnesses and relied on the evidence of the first defendant.

[44] The point of delay in filing this suit was asked of the plaintiff. He explained in re-examination that he filed this action approximately two years after the publication because he was confused and unsure whether the

content he heard was the old defamatory allegations from 2003 or the new ones, as he contended that DAP was constantly making defamatory allegations against him. There was no appraisal from the plaintiff as to why it took him two years to initiate this suit against the defendants.

[45] The less debatable point of whether impugned words one and two were about the plaintiff, the first defendant confirmed that the content related to the plaintiff's history, including his alleged involvement in publishing scandalous video/pornographic material, and past attacks on Dato Seri Anwar Ibrahim. The first defendant viewed the plaintiff's application to join PPBM negatively, primarily due to the plaintiff's "colourful" past. He maintained that he was justified in pointing out that "morally-compromised political opportunists should not be given free passage" into the newly elected Government. However, when cross-examined specifically on the meaning of the word "perogol" in the impugned words two, the first defendant denied that he meant the word to refer to the plaintiff. He stated that the identity was unknown.

[46] Another non-contentious fact that features in this suit for defamation is publication. There is no denial by the second and third defendants that impugned words one were published on the online news portal of Malaysiakini. There is neither a denial from the first defendant and DAP (through the fourth, fifth, and sixth defendants) that impugned words two were published on the DAP website at the material time.

[47] The contentions that played out lengthily over the cross-examinations of both the plaintiff and the first defendant were the meaning of impugned words one and two. This court heard and observed the plaintiff's complaint that they meant he was the rapist in the 1994 scandal. He maintained that the statement was false. The plaintiff relied on DAP's statement of 21 October 2003, in which, following a later signed declaration by Noryati Mohamed Yusop denying any private relations with the plaintiff, DAP's contention that alluded to the plaintiff's guilt of the allegations became baseless.

[48] The first defendant, on the other hand, conceded that he had no personal knowledge of whether the factual claims he made in the articles were true. He was approximately ten or 11 years old when the alleged statutory rape events occurred in 1994. He stated that he relied on publicly available information and documents, such as the UCA News. He confirmed he did not consult senior DAP members to verify the accuracy of the 1994 facts before publishing his written article that contained impugned words one and two.

[49] An admission of the fact that DAP was aware of Noryati Mohamed Yusop's statutory declaration that, amongst others, led to the withdrawal of the allegations by DAP, was ascertained through the first defendant.

He further clarified his definition of "involved" by referring to the plaintiff's own Facebook posting on 31 May 2018 that references the alleged scandal, justifying the plaintiff's linkage to the said 1994 scandal.

[50] The plaintiff's position on those background events, as revealed during his extensive cross-examination as PW2, presents a striking paradox. He admitted to being investigated in relation to what he acknowledged was a scandal (the 1994 scandal). He agreed that he was subjected to investigation by the authorities pertaining to this scandal, and his learned counsel conceded that the investigation is a matter of public record.

[51] More significantly, the plaintiff admits that this scandal led to his resignation as Chief Minister of Melaka in October 1994. Yet despite these admissions, he vehemently maintains his complete innocence. He reminded that there was no prosecution, charge, or conviction in relation to the alleged crime. The plaintiff attempts to reconcile this contradiction through his narrative of political conspiracy. His testimony elaborated on what he had posted on his Facebook dated 31 May 2018. He gave evidence on several facts regarding his political stance, particularly relating to his resignation and his history with Dato Seri Anwar Ibrahim.

[52] The plaintiff explains that he was the victim of "the dirtiest political conspiracy" in Malaysian political history, orchestrated by jealous political enemies ("pelesit2 politik yg cemburu ini") within his own party, UMNO at that material time. He claimed that he was accused in the media of corruption and scandal for 52 days non-stop ("ditohmah dlm media melakukan rasuah dan skandal selama 52 hari tidak berhenti2") by mainstream media acting under political direction. The plaintiff's answer to this extraordinary situation (he admits the investigation occurred, admits his resignation followed the scandal, yet insists on complete innocence) appears to be that he resigned to allow investigations to proceed without interference and to avoid embarrassment to the Government. Yet this explanation sits uneasily with his claim of a political conspiracy.

[53] The plaintiff provided testimony contradicting his admission that his resignation was solely due to the 1994 scandal allegations. He stated in this court that he did not step down because of the 1994 scandal, but because he was deceived. When speaking about the events surrounding this decision to step down from UMNO Youth, the plaintiff testified that the reason to step down was, "Saya kata saya diberitahu Anwar Ibrahim dapat arahan daripada Perdana Menteri". The plaintiff claimed he was later informed that what was informed to him was not true, but he was deceived. His testimony also addressed his historical actions and subsequent feelings regarding Dato Seri Anwar Ibrahim.

[54] Then, there is the Dato Trio's incident which is highly relevant as it forms a critical component of the defendant's justification defence and goes directly to the plaintiff's character and reputation. This is because during cross-examination, the plaintiff admitted that he disseminated the pornographic video, he had pleaded guilty to the charge, which resulted in a criminal record in his name. He claimed that it was "satu perjuangan" for the good of the nation. The plaintiff claimed that distributing the pornographic video, which allegedly featured Dato Seri Anwar Ibrahim, was his patriotic responsibility.

[55] *Vide* the plaintiff's cross-examination, he confirmed that he had committed the crime because he was affected and dissatisfied with Dato Seri Anwar Ibrahim and had felt the need, according to him, to display Dato Seri Anwar Ibrahim's true character even though it was two decades after his resignation. The plaintiff claimed however that he felt vindicated because Dato Seri Anwar was sentenced to jail on another matter.

[56] Court records from *Lim Guan Eng v. PP & Other Appeals* [1998] 3 CLJ 769 add another layer of complexity, stating at pp. 770-771: "Although Rahim was charged with sexual offences involving a minor ('the minor'), based on the decision of the Public Prosecutor that evidence was inadequate, the charges against Rahim were withdrawn". This suggests charges were actually filed in court before being withdrawn – a fact the plaintiff disputes. However, the court records stand as they are to this day.

[57] Furthermore, a report in ST Asian Insider: Malaysia Edition that he was charged but the case was later withdrawn with the Public Prosecutor later citing a lack of evidence.

[58] This paradox – admitting the scandal and resignation while maintaining innocence and claiming conspiracy – would become central to the defendants' justification defence. They argued that regardless of the plaintiff's protestations of innocence, the admitted facts (investigation and resignation) were sufficient to justify their statements about his unsuitability for political office.

[59] This court observed that the plaintiff in claiming his conviction for the Dato Trio's incident was a political struggle, showed no remorse on the witness stand. This goes to character and reputation.

[60] In defamation cases, the plaintiff's existing reputation is crucial. As the defendants argued, someone with criminal convictions cannot claim the same level of reputation damage as someone with an unblemished record. This forms part of the defendants' justification defence. Reliance was placed on the 1994 scandal (investigation and resignation). The Dato Trio's incident (proven criminal offence) and political opportunism (no contribution to coalition struggle) for having opposed the plaintiff's PPBM membership.

[61] The first defendant explicitly cited the Dato Trio's incident as one of his reasons for opposing the plaintiff's PPBM membership, stating that it demonstrated the plaintiff was scandal-laden and morally compromised. It was argued that this conviction, combined with the 1994 scandal shows a pattern of behaviour incompatible with the reform agenda of Pakatan Harapan. The fact that the plaintiff distributed pornographic material for political purposes, which the plaintiff admitted at trial, undermines his claim to moral high ground.

Are Impugned Words One And Two Capable Of Being Defamatory?

Legal Framework And Burden Of Proof

[62] The burden of proof in this defamation suit lies with the plaintiff to establish his case, initially on the core elements of the tort, and subsequently to defeat the various defences raised by the defendants. It is settled law that in an action for defamation/libel, the plaintiff must first prove on a balance of probabilities that words of slander one and two carry defamatory meaning or imputation. This court applies an objective test in which it must be given a meaning a reasonable man of ordinary intelligence would understand, to determine whether they are defamatory.

[63] Next of the two-staged test is if the answer is in the affirmative, whether impugned words one and two are in fact defamatory. Refer to the Court of Appeal's decision in *Chok Foo Choo v. The China Press Bhd* [1999] 1 CLJ 461; [1999] 1 MLJ 371; [1999] 1 AMR 753; [1998] 2 MLRA 287. See also *Yokomasu Marketing Sdn Bhd & Anor v. Chor Tse Min* [2017] CLJU 1902; [2017] 1 LNS 1902; [2018] 2 MLJ 654.

Approach To Interpretation

[64] In determining this question of law, it is necessary to consider the statement as a whole, in the context of the whole article, not in isolation, in considering whether the words complained of are capable of being defamatory. Refer to Court of Appeal's decision in *Keluarga Communication Sdn Bhd v. Normala Samsudin & Another Appeal* [2006] 2 CLJ 46; [2006] 2 MLJ 700; [2006] 2 AMR 604 and *Dato' Seri Anwar Ibrahim v. The New Straits Times Press (M) Sdn Bhd & Anor* [2010] 5 CLJ 301; [2010] 2 MLJ 492.

[65] The plaintiff contends that the impugned words one and two, in their natural and ordinary meaning, meant and were understood to mean that:

(i) the plaintiff has committed a criminal offence;

(ii) the plaintiff has caused pain and suffering to several victims due to his conduct;

(iii) the plaintiff is a rapist who is still at large;

(iv) the plaintiff has committed an offence of rape and/or statutory rape;

(v) the plaintiff by virtue of allegedly committing the offences stated in (iii) and (iv) above, is a criminal;

(vi) the plaintiff by virtue of allegedly committing the offences stated in (i) to (iv) above, lacks integrity; and

(vii) the plaintiff by virtue of allegedly committing the offences stated in (i) to (iv) above, is unethical and unfit to hold public office.

[66] In essence, the plaintiff submits that the impugned words portray him as a rapist and criminal, particularly through the use of the Malay words "rogol" and "perogol", which allegedly refer to him in connection with the underage Noryati Mohamed Yusop. The imputation, he argues, is of the gravest kind, tarnishing his moral and political standing.

[67] He also stresses that the first defendant's political position amplifies the credibility of the allegation. According to the plaintiff, the defamatory meaning is compounded because the first defendant is a high-ranking member of DAP and a State Assemblyman, giving more weight to the veracity of the allegations.

Context And Reference

[68] The plaintiff admitted during his testimony that both the publications refer to him "by implication". It is the submissions of the plaintiff that the general knowledge and experience of the ordinary man allow him to read between the lines and draw inferences or implications that are regarded as part of the words' natural and ordinary meaning; and thus, without even the express wording, the defamatory meaning is obvious. The title of the articles also, according to the plaintiff, suggests reference to the plaintiff, assisting the ordinary reader in drawing the necessary inference.

[69] The plaintiff relies heavily on the fact that DAP had previously conceded that similar allegations regarding the issue of rape/statutory rape were "wholly unfounded". The plaintiff contends that the repetition of these known untrue, false, and baseless allegations demonstrates malice, which would further strengthen a finding that the impugned words one and two are defamatory.

The Defence

[70] All the defendants deny that the words are capable of bearing the extreme meanings pleaded by the plaintiff. The first defendant denied that the meaning of the word "perogol" refers to the plaintiff. His testimony revealed that the identity of the rapist was unknown. The key defensive argument is that the requirement for pleading innuendo, which the plaintiff had failed to do. The plaintiff had only pleaded reliance on the natural and ordinary meaning.

[71] Thus, the defendants contend that the plaintiff's pleaded meaning relies on special or extrinsic facts (knowledge of the 1994 scandal). Such a meaning amounts to a true or legal innuendo, and since the plaintiff failed to plead innuendo as required under O. 78 r. 3 of the Rules of Court 2012 (RoC), he cannot now rely on it. Thus, the plaintiff's "rapist" meaning cannot be sustained as a matter of law.

[72] The defendants argued that the plaintiff's interpretation is a strained construction. They submitted that when read fairly and in context, the words at most mean that the plaintiff was linked to or investigated in connection with a past scandal, which is not defamatory *per se*. They contend the publication was an expression of opinion opposing the plaintiff's entry into PPBM, based on his controversial past – including his conviction in the Dato Trio's incident – and his association with the 1994 Scandal.

[73] A foreign precedent of *Lewis v. Daily Telegraph Ltd* [1963] 2 All ER 151 was cited by the defendants to support their argument that mere reference to an investigation does not impute guilt. It is the position of the defendants that the publications referred to true and accurate facts, specifically the distress of the victim and her grandmother, and the fact that Lim Guan Eng was jailed for raising issues concerning the rape of a minor.

Legal Considerations On Meaning And Pleading

[74] In determining the question of law which is whether impugned words one and two are capable of bearing a defamatory meaning, this court must interpret the natural and ordinary meaning of the words, interpreting them as a reasonable person would, by considering the whole article in its entirety and the surrounding facts, including the plaintiff's own public statements on his Facebook page. Refer to *Chong Chieng Jen v. Government Of State Of Sarawak & Anor* [2019] 1 CLJ 329; [2018] MLJU 1649.

[75] A statement is capable of being defamatory if it inclines to excite against the plaintiff the adverse opinion of others, or if it tends to lower the plaintiff in the estimation of right-thinking members of society generally. The first defendant did not expressly state that the plaintiff is a/the rapist who is still at large. Because the plaintiff has pleaded only on the natural and ordinary meaning, the court is confined to that meaning. The law distinguishes between:

(i) natural and ordinary meaning – what the words convey, including implications a reasonable reader would draw using general knowledge; and

(ii) true innuendo – a meaning that arises only through special or extrinsic facts, which must be specifically pleaded and particularised (O. 78 r. 3 of the RoC). Where an innuendo is not expressly pleaded, it cannot arise or be relied upon. This court is then obligated to adhere strictly to the pleadings.

[76] Extrinsic evidence is inadmissible when determining the natural and ordinary meaning; this court must derive meaning solely from the text and context of the publication itself. (See *Tim Yeo MP v. Times Newspapers Ltd* [2014] EWHC 2853 (QB)).

Application To The Facts

[77] The defendants contend that the plaintiff's interpretation (that he was directly labelled "the rapist") depends on special knowledge of the 1994 scandal and therefore constitutes an unpleaded true innuendo. The plaintiff argues otherwise – that the meaning is obvious from the text itself. So, argued by the plaintiff, there was no need to plead innuendo. The plaintiff filed this suit in October 2020. This case was eventually transferred to a fourth court which is this court in March of 2024, and the trial commenced in April 2024. The plaintiff had not attempted to correct or amend his pleadings to include innuendo to interpret impugned words one and two.

[78] This court considered the authorities cited by the plaintiff (*Syed Husin Ali v. Sharikat Penchetakan Utusan Melayu Bhd & Anor* [1973] CLJU 146; [1973] 1 LNS 146; [1973] 2 MLJ 56, *Yuvarani Ravindra v. Percetakan Kum Sdn Bhd & Ors And Another Case* [2010] 9 CLJ 95; [2010] 6 MLJ 106, *Liu Thian Leong & Ors v. Jee Nyen Chong & Ors* [2021] 9 CLJ 715; [2022] 1 MLJ 420 and *Dato' Seri Anwar Ibrahim v. The News Straits Times Press (M) Sdn Bhd & Anor* [2010] 5 CLJ 301; [2010] 2 MLJ 492).

[79] The plaintiff's own Facebook post of 31 May 2018 uploaded in the public domain just six months prior to the publications of impugned words one and two, is a critical piece of contextual evidence. The plaintiff acknowledged his investigation and resignation as Chief Minister of Malacca in 1994, which forms part of the public knowledge that colours how a reasonable reader would understand the publications. This pre-existing public acknowledgment of being investigated in connection with a major scandal is part of the general knowledge that the ordinary reader would use to understand impugned words one and two.

[80] The publications that contained impugned words one and two did not expressly state that the plaintiff is the rapist at large or even committed the rape. The publications specifically named the plaintiff in the Dato Trio's incident, and his non-contribution to the fight of Pakatan Harapan coalition at the voting polls. Therefore, given that innuendo was not pleaded, this court is constrained to assess only the natural and ordinary meaning.

[81] This court is mindful that innuendo refers to the implied meaning of words that may not be defamatory on their face, but can be interpreted as such in a specific context. Strict compliance in pleading innuendo is essential to clearly establish how the words are defamatory in the context of the plaintiff's reputation. By requiring strict compliance, the law aims to balance

the protection of individual reputation with the right to free speech. The law discourages frivolous claims and ensures that only serious allegations are pursued.

[82] Order 78 r. 3 of the RoC specifically addresses the requirements for pleadings in defamation cases, including the need for a clear statement of the words complained of and the innuendo. It mandates that the plaintiff must detail the words alleged to be defamatory and specify any particular meanings attached to those words. In this case, much extrinsic evidence needs to be related to in interpreting the impugned words one and two in their natural and ordinary meaning. Hence, for this suit, the defendants' objection is allowed. *Mohamed Hafiz Mohamed Nordin v. Eric Paulsen & Another Appeal* [2018] CLJU 1731; [2018] 1 LNS 1731; [2019] 1 MLJ 580 and *Lim Guan Eng v. Ruslan Kassim & Another Appeal* [2021] 4 CLJ 155; [2021] 2 MLJ 514 are distinguishable by the facts of this case.

Determination Of Capability

[83] Even if the extreme imputation (that the plaintiff is "a rapist") cannot be legally sustained without a pleaded innuendo, the words remain capable of a lesser defamatory meaning – namely, that the plaintiff is a morally compromised individual linked to a serious sexual misconduct scandal and has a criminal past rendering him unfit for public office.

[84] Impugned words one and two contain such imputation that would undoubtedly tend to lower the plaintiff in the eyes of right-thinking members of society. When read objectively and in context, including the plaintiff's prior public statements and the political undertones of the publication, impugned words one and two are capable of bearing this lesser defamatory meaning.

[85] At this first stage, the court's task is to determine capability, not actuality. On the evidence and submissions, this court finds that the impugned words are capable of being defamatory – at least to the extent that they impute dishonourable conduct, lack of integrity, and unfitness for public office – even if the extreme "rapist" meaning is excluded for want of a pleaded innuendo.

[86] The determination of whether words are capable of bearing a defamatory meaning is merely establishing the gate; whether they in fact bear that meaning is the next analytical step, relying on the overall impression left on the mind of the hypothetical ordinary reader, who is assumed to be fair-minded but capable of drawing inferences from the context.

Are Impugned Words One And Two In Fact Defamatory?

[87] At this second stage, the court determines as a question of fact whether, read as a whole and in context, the natural and ordinary meaning of impugned words one and two does convey a defamatory sting. The court

balances the severity of the terminology against the contextual facts and the pleaded issues (including the absence of a pleaded true/legal innuendo). See *JB Jeyaretnam v. Goh Chok Tong* [1984] CLJU 139; [1984] 1 LNS 139; [1985] 1 MLJ 334, *Tun Datuk Patinggi Hj Abdul Rahman Ya'kub v. Bre Sdn Bhd & Ors* [1995] CLJU 304; [1995] 1 LNS 304; [1996] 1 MLJ 393.

[88] Consistently with the stage-one finding, the enquiry here is whether the lesser meaning – namely that the plaintiff is unethical, lacks integrity, and is unfit for public office – is in fact conveyed when an ordinary, reasonable reader considers the publications in their proper context.

Plaintiff's Position On Meaning In Fact

[89] The plaintiff argued that the references to the 1994 scandal and the use of the words "rogol" and "perogol" irrefutably link him to gross immorality and criminality, thereby imputing dishonourable conduct, lack of integrity, and unfitness for office. Even if the absolute meaning of "guilty of rape" is discounted (given the pleading dispute), the words still cast a serious slur.

[90] It is said that there is no 'antidote' within the texts to remove the sting: a reasonable reader would conclude that the plaintiff committed rape and/or statutory rape and is therefore a criminal. The plaintiff further argues that the first defendant's public standing and the second defendant's role as an online news portal amplified the credibility and harm.

[91] The plaintiff stresses that the defendants were fully aware that similar allegations concerning the 1994 scandal had been previously admitted by the DAP in open court as "wholly unfounded" or baseless and untrue in 2003 and 2022. He contended that to republish these known falsehoods maliciously implies the intent was specifically to malign and defame the plaintiff, maximising the damage. The first defendant's status and the second defendant's status as an online news portal added weight to the alleged veracity, which the plaintiff submits enhances the defamatory nature of the publication.

The Defendants' Position On Meaning In Fact

[92] The defendants deny that the impugned publications state or imply that the plaintiff is "the rapist". They say the identity of the rapist is not asserted, and the publications, read fairly, convey only that the plaintiff was linked to or investigated in connection with a historical scandal, which is not defamatory *per se*. They rely on *Lewis v. Daily Telegraph Ltd* (*supra*), contending that reference to an investigation does not equate to guilt.

[93] The first defendant's case is that the publications set out true, accurate background facts (including the plaintiff's resignation and past conviction in the Dato Trio's matter) and express a view opposing the plaintiff's application to join PPBM based on his controversial past. The lesser meaning – linkage to the 1994 scandal and unsuitability for office – is said to be the fair, contextual reading.

[94] At the opposite, the first defendant and DAP argue that when applying the facts to the natural and ordinary meaning of the entire publication, the sting accepted by this court is either neutralised, or that the lesser meaning conveyed is one of true fact, thereby making the statement non-defamatory or justifiable (which is a defence against liability).

Analysis Of Meaning In Fact

[95] This court examines the whole text, its thrust and context, including contemporaneous public knowledge. The plaintiff's own Facebook post dated 31 May 2018 acknowledging investigation and resignation in 1994 forms part of the backdrop a reasonable reader brings to bear.

[96] Measured against that backdrop, and setting aside any extreme "rapist" imputation (not available absent a pleaded true innuendo), the publications do convey a lesser but serious sting: that the plaintiff is a politically controversial figure linked to grave sexual-misconduct allegations, and that his character/past renders him unfit for public office. That lesser sting is capable of lowering him in the estimation of right-thinking persons.

[97] Accordingly, as a matter of fact, the court finds that the publications bear the lesser defamatory meaning identified at stage one.

Justification

[98] The first defendant contends that, when the facts are applied to the lesser meaning actually conveyed, the sting is either neutralised or substantially true. The publications fairly state: (i) the existence of the 1994 scandal and the plaintiff's linkage to it, and (ii) the plaintiff's undisputed Dato Trio's conviction and the surrounding political controversy.

[99] Of particular significance is the plaintiff's admission in cross-examination that he would break the law "jika perlu" (if necessary). This brazen admission by the plaintiff on his willingness to break the law is directly relevant to assessing his fitness for public office. While the plaintiff's counsel distinguishes the Dato Trio's conviction from any allegation of rape, the publications (read as a whole) advance the case not that the plaintiff committed rape, but that his character and past conduct render him unfit for office. The Dato Trio's conviction is indisputable and directly relevant to that broader character assessment.

[100] There was also no rebuttal of the assertion that the plaintiff had not contributed to the Pakatan Harapan coalition struggle leading to the 2018 14th General Election victory. On the totality, this court finds that the defence of justification is proven on a balance of probabilities as to the lesser sting actually conveyed.

Fair Comment

[101] The defence of fair comment protects the expression of opinion on a matter of public interest, provided certain conditions are met. As held in *Nurul Izzah Anwar v. Tan Sri Khalid Abu Bakar & Anor* [2018] 7 CLJ 622, the following elements must be established:

(i) the defendants must show that impugned words one and two are comments (or include inferences of fact) and not merely statements of fact;

(ii) they concern a matter of public interest;

(iii) they are based on facts where the underlying material facts necessary to form the basis of the comments must be true and existing; and

(iv) they are those which a fair-minded person can honestly make on the facts proved.

[102] With regards to the first two elements, this court is of the considered view that the titles to the publications – "Khianat jika Rahim diterima masuk Bersatu – Pemuda DAP" and "Permohonan Rahim sekiranya diterima akan ditafsir sebagai pengkhianatan" plainly signal opinion and political comments on a matter of public interest.

[103] For the third element, the underlying facts relied on include: (i) coalition solidarity dynamics; (ii) the plaintiff's role in the Dato Trio's episode and resulting conviction; and (iii) concerns over admitting a controversial figure into PPBM at the material time. These facts were either undisputed or sufficiently established.

[104] As to the fourth element, this court finds that the opinions expressed fall within the range of a fair-minded person could honestly hold onto those facts. The defence of fair comment therefore succeeds for the first defendant for impugned words one and two, and as regards impugned words one, likewise protects the second and third defendants who published an evident opinion piece.

Qualified Privilege – Defence Of Reportage

[105] The second and third defendants implored that the plaintiff had failed to prove as a fact that the natural and ordinary meaning of impugned words one and two were defamatory. It was highlighted that the plaintiff himself conceded that impugned words one did not expressly state his name and role in the allegations, save that his name was mentioned in the title of the publication. The plaintiff had also conceded that he does not take issue with other parts of the publication.

[106] The second and third defendants further rely on reportage, a sub-species of qualified privilege (see *Roberts v. Gable* [2008] QB 502; *Mkini Dotcom Sdn Bhd & Ors v. Raub Australian Gold Mining Sdn Bhd* [2021] 7 CLJ 145; [2021] 5 MLJ 79 at [21]), which protects neutral reporting of the fact that allegations or opinions were made, rather than their truth.

[107] This court considers firstly whether the thrust of the publication was to report that the first defendant (a public political actor) made the statements; secondly whether the subject was of public interest; and thirdly whether the report was neutral and disinterested rather than adopting the statements as true.

[108] The evidence shows the article was plainly the first defendant's opinion piece, presented as such; the second and third defendants framed it as his view, identified him and his position, and did not embellish or adopt his assertions. The later removal of the sentence "Perogol masih berleluasa" demonstrates editorial caution and an effort to avoid reporting unverified assertions of fact. The plaintiff's submissions that the reason for the removal was because the second and third defendants were well aware and had full knowledge that the allegations were untrue against him are not accepted in the whole factual context and circumstances of the publication. As evident, it was indeed a voiced opinion of the first defendant that he had penned. The publication of the first defendant's comments had linked reports on the matter as well.

[109] The second and third defendants did not adopt the report in the sense of taking sides on that which it reported and must make it in a disinterested and neutral way.

[110] Given the political context from 16 December 2018 to 18 December 2018 (party-hopping controversies; PPBM's coalition position; the plaintiff's announced departure from UMNO and application to join PPBM), the public interest was clear. This court therefore finds the defence of reportage made out for the second and third defendants.

No Malice

[111] The plaintiff seeks to infer malice in alleging the second defendant was fully aware of articles 15 years prior to the publication in 2018, wherein DAP had accepted similar allegations as to the 1994 scandal to be unfounded in 2003. Scrutinising the evidence, this court finds that way before the publication, the facts which impugned words one were based on were already widely circulated and reported. The publication, and also many others relating to the same issue, were neutrally covered by the second defendant.

[112] The second and third defendants had given the plaintiff the opportunity to publish his version of events, to show that they were not taking sides. They had iterated clearly that they were carrying out their job in good faith to inform citizens of public interest. The plaintiff had refused to do so and did not raise the articles printed in 2003.

[113] Alleged malice (based on DAP's 2003 acceptance that similar allegations were unfounded) is not established on the evidence. Prior to publication, the background facts were widely reported and contemporaneously debated; the second and third defendants gave the plaintiff an opportunity to present his version; their coverage was generally neutral in tone. There is insufficient proof that they acted with a dominant improper motive to defeat fair comment or qualified privilege.

[114] In the premises, this court does not see any malice on the part of the second and third defendants. Thus, the defence of reportage available for the second and third defendants is clearly not defeated.

Abuse Of Process

[115] The defendants also contend that the plaintiff's two-year delay in filing suit evidence a lack of real harm and suggests an ulterior motive. While libel is actionable *per se*, delay is a contextual factor when assessing relief and purpose. The plaintiff's explanation was that he was waiting for proof and was confused. Yet, that proof was not tendered into court. Only the publications themselves which were always available. Be that as it may, the explanation still sits uneasily with his immediate public responses on 18 December 2018 after the publications.

[116] The delay point is cited by the first defendant and DAP as evidence of a selective approach and an ulterior motive on the plaintiff's part, suggesting this suit is an abuse of process. They argued the delay meant the publications remained accessible for a longer period. Their submission is that the long period during which the publications that contained impugned words one and two were in circulation (two years) before legal action was taken is argued to preclude the plaintiff from seeking an injunction against the publication now.

[117] The second and third defendants submitted that the plaintiff's suit against them is a clear attempt at censorship and a strategic litigation against public participation that has the effect of stifling the performance of journalists' constitutional function, disseminating ideas and opinions on issues of public interest, and thus amounts to an abuse of process and an infringement of Malaysiakini's constitutional rights. This court accepts their submissions that the plaintiff's claim against Malaysiakini was selectively targeted towards Malaysiakini and conducted "in a manner designed to cause the defendant problems of expense, harassment, commercial prejudice or the like beyond those ordinarily encountered in the course of properly conducted litigation". Cited from *Wallis v. Valentine* [2002] EWCA Civ 1034.

[118] On the whole and having regard to submissions including *Wallis v. Valentine* (*supra*), this court is concerned that the action against the second and third defendants bears features of strategic litigation aimed at chilling political speech and reportage. This reinforces the availability of reportage and fair comment in the present context.

Conclusion

[119] Based on the extensive consideration of all the evidence, case laws, and submissions of all learned counsel of the parties, this court finds that, read as a whole by the ordinary reasonable reader, impugned words one and two do convey the lesser defamatory meaning identified – namely, that the plaintiff is a morally compromised figure linked to a serious scandal and is unfit for public office.

[120] However, liability does not follow because the defence of justification is made out as to that lesser sting; fair comment protects the opinions expressed on matters of public interest; and, in relation to the second and third defendants, reportage applies. Malice is not proven, and the delay raises additional process concerns.

[121] Accordingly, while impugned words one and two are defamatory in fact (in the lesser sense), the applicable defences succeed. Consequently, the plaintiff has failed to prove its case on a balance of probabilities against all the defendants. The plaintiff's suit is hereby dismissed.

[122] The first defendant and DAP (fourth, fifth and sixth defendants) are awarded costs of RM75,000. The second and third defendant are also entitled to costs of RM75,000. All costs are subject to allocator.